

**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

200100895

Issuance Date:

June 2, 2006

STREAM: Unnamed Trib of Wilderness Fork, Unnamed

Closing Date:

Trib of Mech Fork and Unnamed Tribs of Dave Fork

July 2, 2006

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (reference above)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Loadout, LLC
One Carbon Center, Suite 100
Chesapeake, West Virginia 25315

LOCATION: The proposed project would be located in unnamed tributaries of Dave Fork, an unnamed tributary of Mech Fork and an unnamed tributary of Wilderness Fork, approximately 1.25 miles northwest of Nellis, in Boone County, West Virginia (latitude 38° 09' 38" and longitude 81° 45' 45") as depicted in the attached Location Map (Drawing 1) and Site Map (Drawing 2).

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge dredged or fill material into waters of the United States (U.S.), in conjunction with the construction, operation and reclamation of the Nellis Surface Mine. The purpose of the proposed project is to

recover coal reserves from the Stockton seam, down through and including the Lower Coalburg seam. The applicant proposes to disturb approximately 455 surface acres in conjunction with the proposed coal removal activities. As part of this operation, the applicant proposes to construct four valley fills, two permanent sediment ponds and one temporary sediment pond. The proposed valley fills and associated sediment ponds would be constructed within unnamed tributaries of Dave Fork, an unnamed tributary of Mech Fork and an unnamed tributary of Wilderness Fork. Construction of the proposed project would result in the permanent discharge of dredged or fill material into approximately 11,194 linear feet (1.53 acres) and temporary impacts to 1,390 linear feet (0.23 acre) of waters of the U.S. As part of the project the applicant would construct Dave Fork Fill D1, Dave Fork Fill D2, Mech Fork Fill and Wilderness Fork Fill to facilitate the disposal of excess overburden. The construction of Dave Fork Fill D1 would result in the permanent impact to 1,700 linear feet (0.16 acre) of stream, consisting of 1,444 linear feet (0.14 acre) intermittent stream and 256 linear feet (0.01 acre) ephemeral stream. The construction of Dave Fork Fill D2 would result in the permanent impact to 2,653 linear feet (0.37 acre) of stream, consisting of 1,873 linear feet (0.29 acre) intermittent stream and 780 linear feet (0.07 acre) ephemeral stream. Mech Fork Fill would result in the permanent impact to 1,627 linear feet (0.17 acre) of stream, consisting of 994 linear feet (0.11 acre) intermittent stream and 633 linear feet (0.06 acre) ephemeral stream. Wilderness Fork Fill would result in the permanent impact to 3,222 linear feet (0.40 acre) of stream, consisting of 2,722 linear feet (0.36 acre) intermittent stream and 500 linear feet (0.04 acre) ephemeral stream.

Pond No. 1 is associated with Dave Fork Fill D1 and Dave Fork Fill D2. The construction of Pond No. 1 would result in permanent impacts to 1,180 linear feet (0.31 acre) of intermittent stream and temporary impacts to 1,390 linear feet (0.31 acre) of intermittent stream. Pond No. 5A is associated with the Mech Fork Fill. The construction of Pond No. 5A would result in permanent impacts to 418 linear feet (0.07) of intermittent stream. Pond No. 13 is associated with the Wilderness Fork Fill. The construction of Pond No. 13 would result in permanent impacts to 394 linear feet (0.06 acre) of intermittent stream. Impacts associated with this project are shown on the attached Site Map (Drawing 2) and a summary of proposed impacts is provided in Table 1.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. The applicant has submitted an alternatives analysis, which is currently under review.

MITIGATION PLAN: The applicant has not submitted a Compensatory Mitigation Plan (CMP) to compensate for permanent and temporary impacts to waters of the U.S. that are regulated by the USACE.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. This public notice serves as coordination with the State Historic Preservation Officer regarding historic properties. If the West Virginia Division of Culture and History (WVDCH) believe any potential effects to historic properties

may result from the proposed permitting action, we request they provide information to this office pursuant to Section 106 of the National Historic Preservation Act.

ENDANGERED/THREATENED SPECIES REVIEW: This public notice also serves as coordination with the U.S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. The proposed project lies within the distribution range of the Indiana Bat (*Myotis sodalis*) and Virginia Big-eared Bat (*Corynorhinus townsendii virginiana*). If the Service believes any potential effects to federally listed species would be attributable to the Huntington District's proposed permitting action, we request the Service provide information pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Noah Kennedy, Regulatory Specialist, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Noah Kennedy of the South Regulatory Section at 304-399-5710.

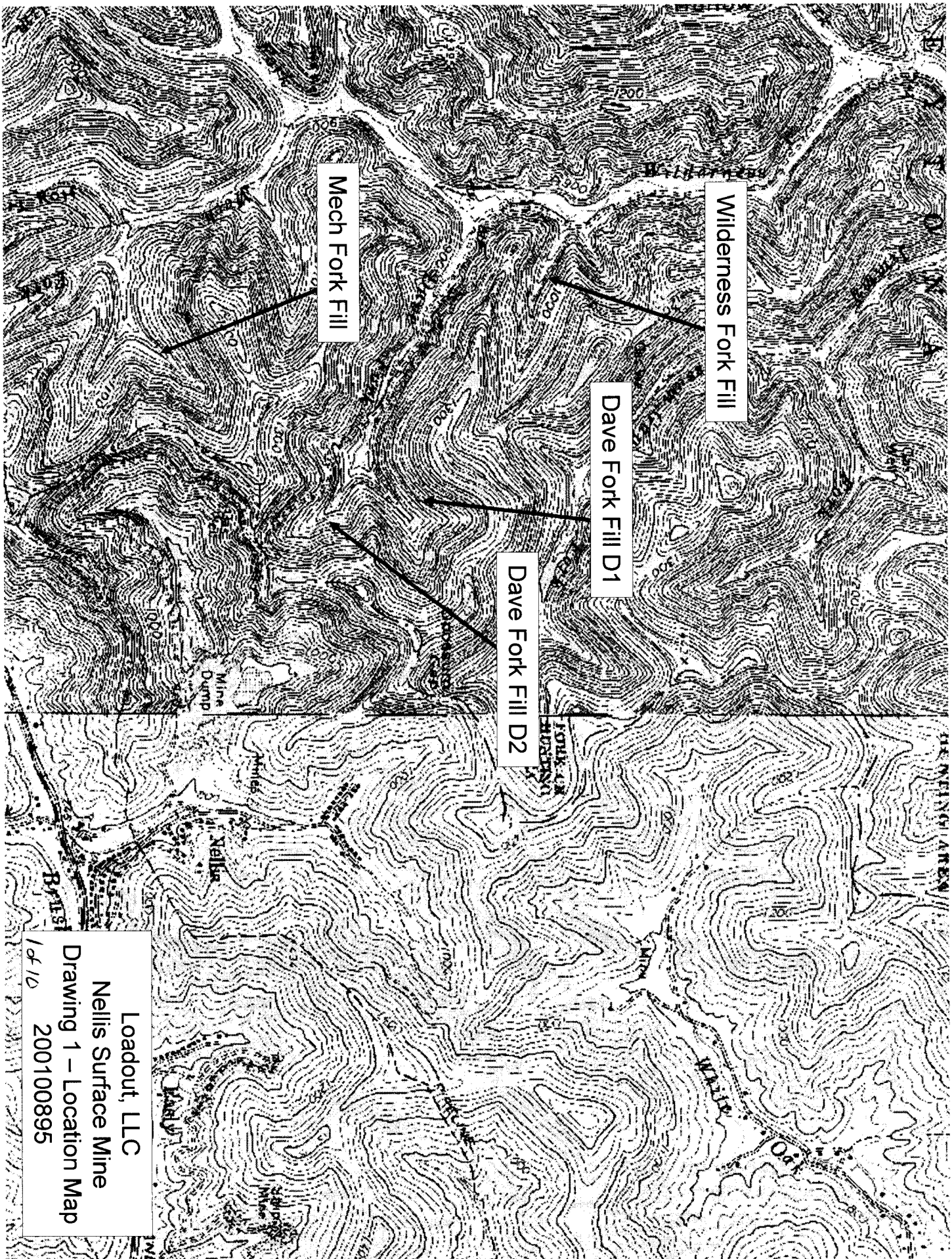


Ginger Mullins, Chief
Regulatory Branch

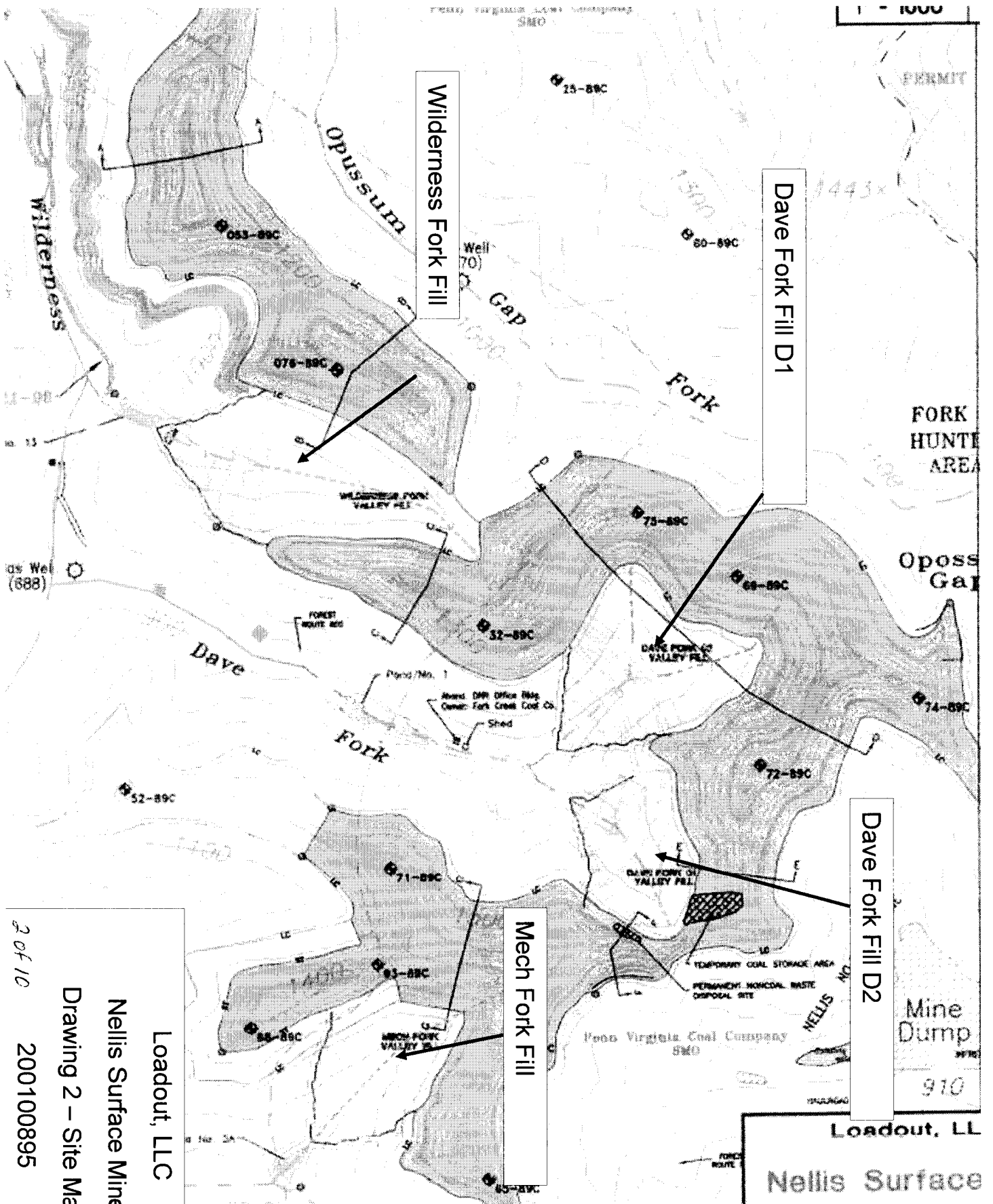
(W)

Table 1 – Proposed Impacts

Structure	Permanent Impacts						Temporary Impacts					
	Intermittent		Ephemeral		Total Impacts		Intermittent		Ephemeral		Total Impacts	
	(feet)	(acres)	(feet)	(acres)	(feet)	(acres)	(feet)	(acres)	(feet)	(acres)	(feet)	(acres)
Pond No. 1	1180	0.31			1180	0.31	1390	0.23			1390	0.23
Dave Fork Fill D1	1444	0.14	256	0.01	1700	0.16						
Dave Fork Fill D2	1873	0.29	780	0.07	2653	0.37						
Pond No. 5A	418	0.07			418	0.07						
Mech Fork Fill	994	0.11	633	0.06	1627	0.17						
Pond No. 13	394	0.06			394	0.06						
Wilderness Fork Fill	2722	0.36	500	0.04	3222	0.4						
Totals	9025	1.34	2169	0.19	11194	1.53	1390	0.23			1390	0.23



Loadout, LLC
Nellis Surface Mine
Drawing 1 – Location Map
1 of 10
200100895



Wilderness Fork Fill

Dave Fork Fill D1

Dave Fork Fill D2

Mech Fork Fill

Loadout, LLC

Nellis Surface Mine

Drawing 2 – Site Map

2 of 10 200100895

Nellis Surface

Loadout, LL

Mine Dump

Food Virginia Coal Company SMO

PERMANENT MONITORIAL WASTE DISPOSAL SITE

TEMPORARY COAL STORAGE AREA

DAVE FORK VALLEY FILL

Shed

Along Dave Office Ridge Owner: Fork Creek Coal Co.

Forest Route 805

WILDERNESS FORK VALLEY FILL

FORK HUNTER AREA

Opossum Gap

Fork

Gap

Opossum

Wilderness

Old Well (888)

No. 13

14-00

25-89C

60-89C

053-89C

076-89C

75-89C

68-89C

52-89C

74-89C

72-89C

52-89C

71-89C

63-89C

68-89C

65-89C

910

SMO

NELLIS

NO

FOREST ROUTE

Loadout, LL

Nellis Surface

Food Virginia Coal Company SMO

TEMPORARY COAL STORAGE AREA

PERMANENT MONITORIAL WASTE DISPOSAL SITE

DAVE FORK VALLEY FILL

Shed

Along Dave Office Ridge Owner: Fork Creek Coal Co.

Forest Route 805

WILDERNESS FORK VALLEY FILL

FORK HUNTER AREA

Opossum Gap

Fork

Gap

Opossum

Wilderness

Old Well (888)

No. 13

14-00

25-89C

60-89C

053-89C

076-89C

75-89C

68-89C

52-89C

74-89C

72-89C

52-89C

71-89C

63-89C

68-89C

65-89C

910

SMO

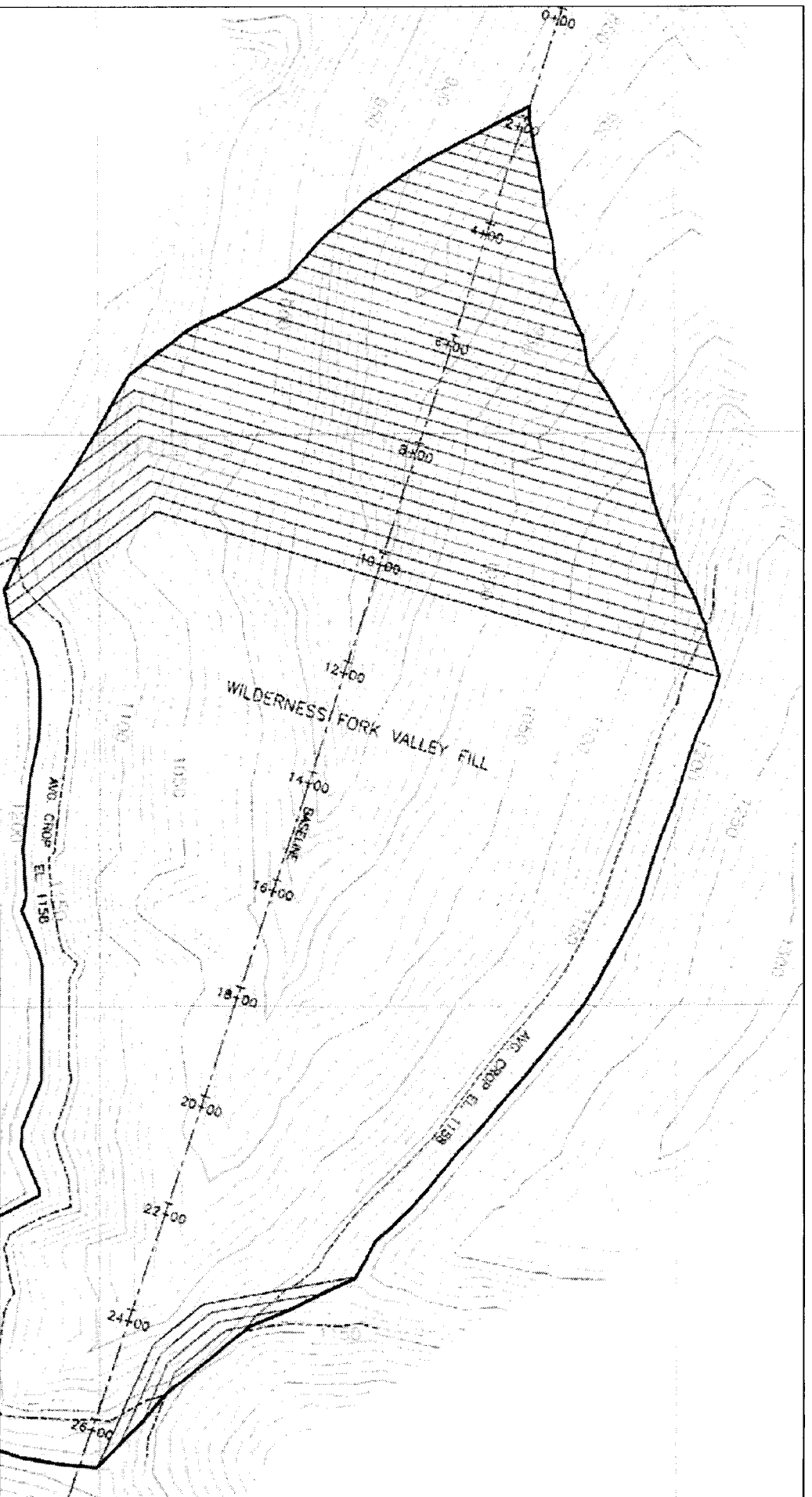
NELLIS

NO

FOREST ROUTE

Loadout, LL

Nellis Surface

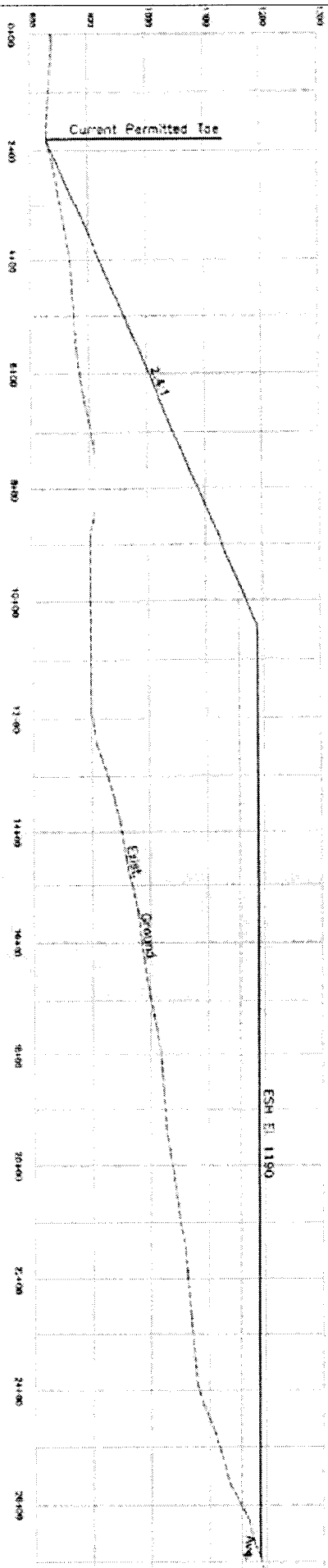


Loadout, LLC

Nellis Surface Mine

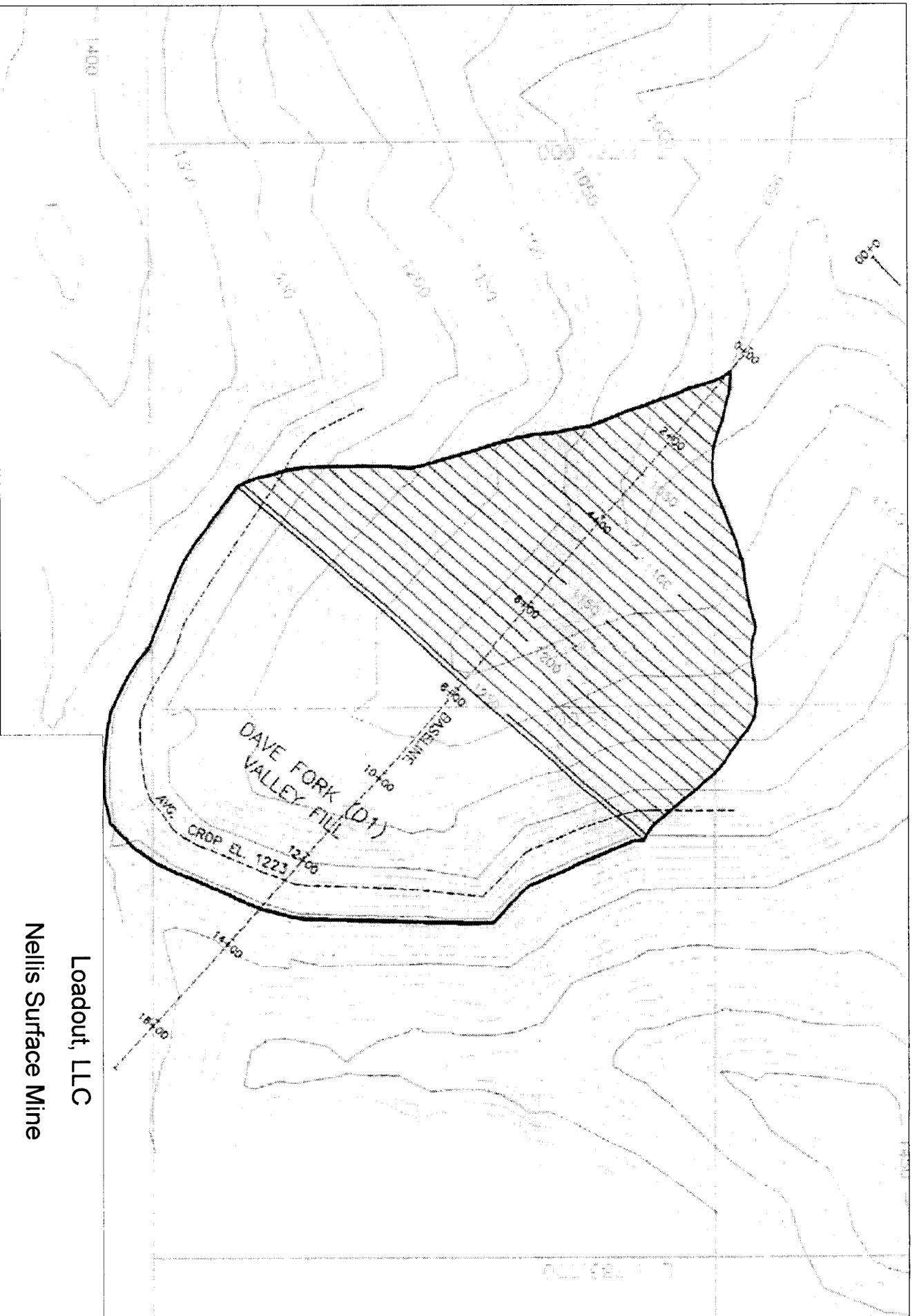
Drawing 3 – Wilderness Fork Fill

200100895



Loadout, LLC
 Nellis Surface Mine
 Drawing 4 – Wilderness Fork Fill Profile

200100895



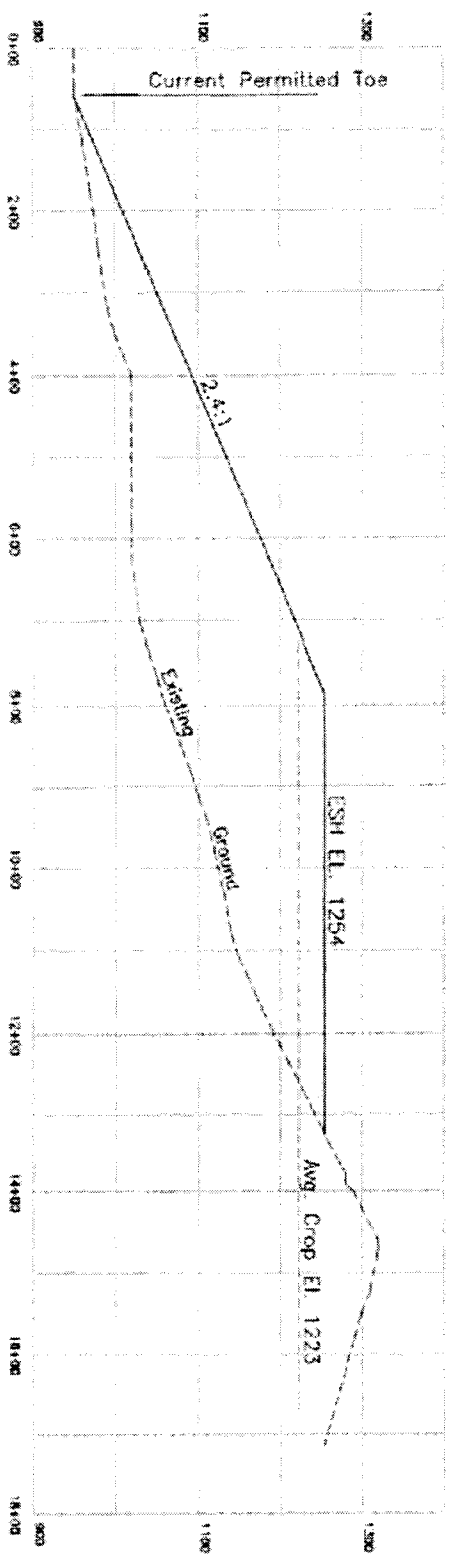
Loadout, LLC

Nellis Surface Mine

Drawing 5 – Dave Fork Fill D1

5 of 10

200100895



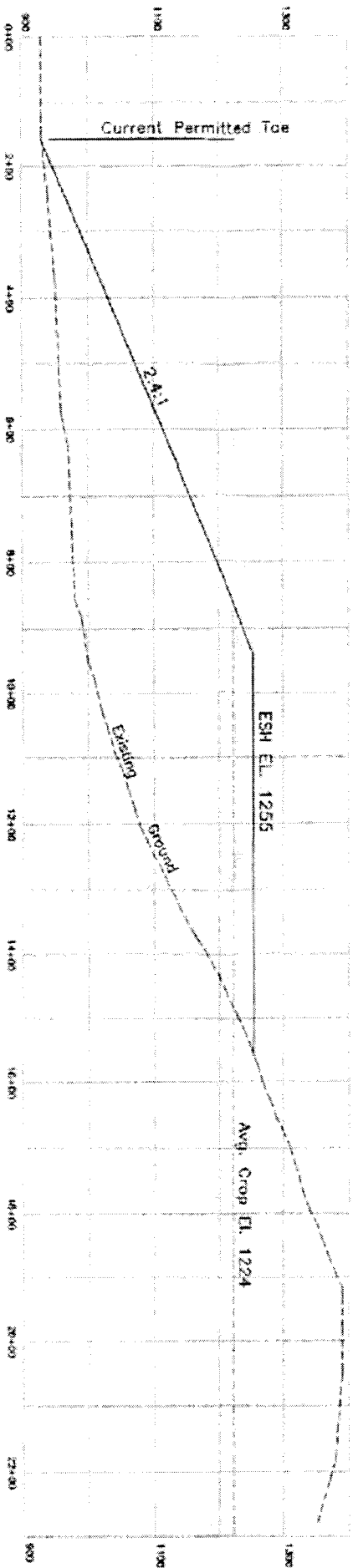
Loadout, LLC

Nellis Surface Mine

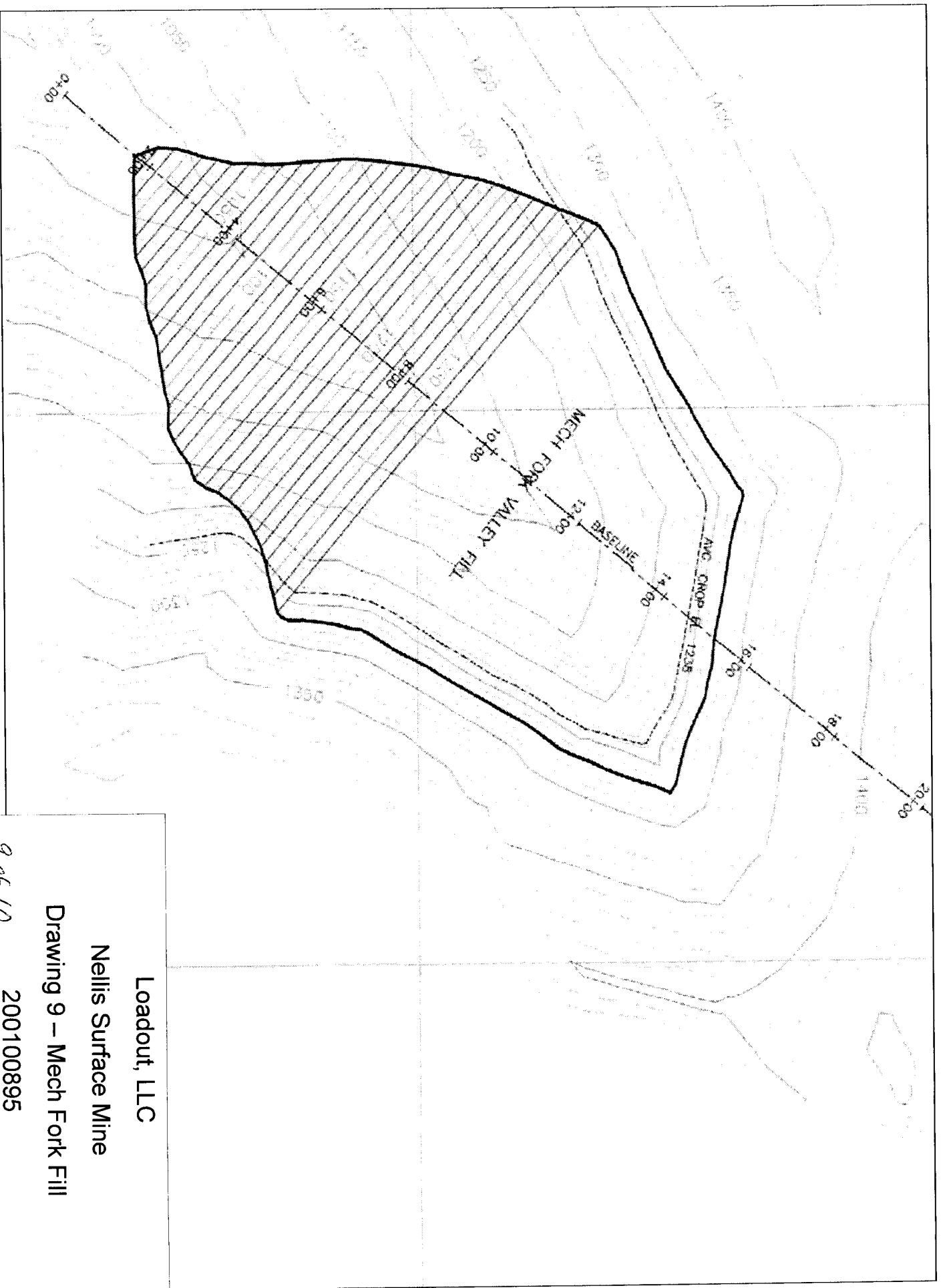
Drawing 6 – Dave Fork Fill D1 Profile

6 of 10

200100895



Loadout, LLC
 Nellis Surface Mine
 Drawing 8 – Dave Fork Fill D2 Profile
 200100895



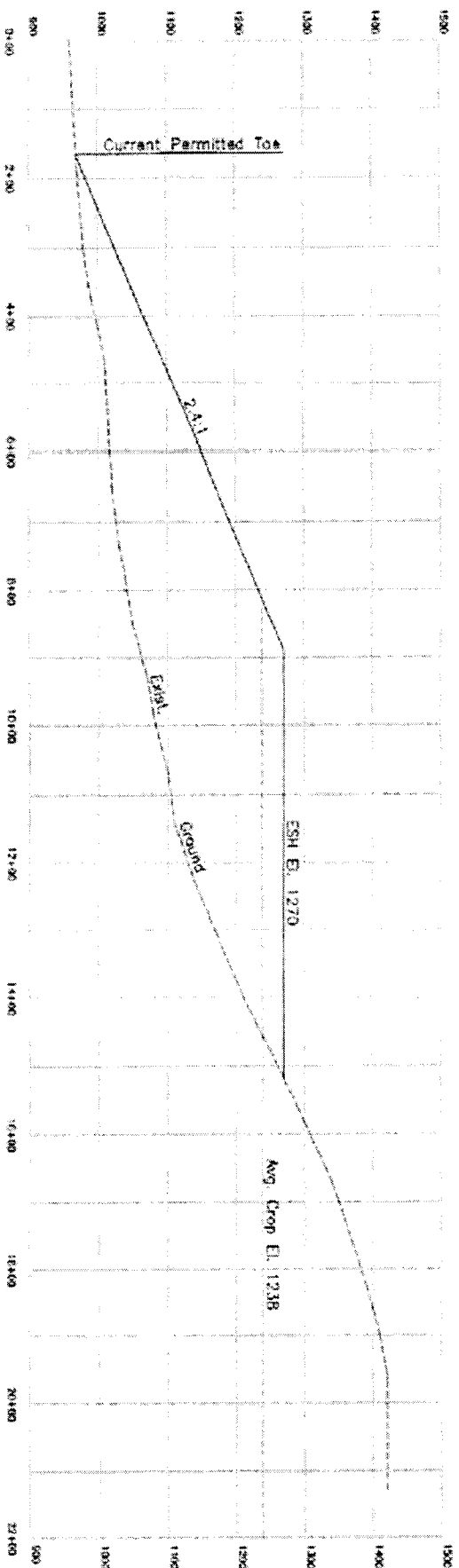
Loadout, LLC

Nellis Surface Mine

Drawing 9 – Mech Fork Fill

9 of 10

200100895



Loadout, LLC

Nellis Surface Mine

Drawing 10 – Mech Fork Fill Profile

10 of 10

200100895